IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2858 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHKUMAR KHIMJIBHAI KALARIYA - Petitioner(s)

Versus

VINAY VYASA, OR HIS SUCCESSOR IN OFFICE & 3 - Respondent(s)

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Appearance :

(MR JAYANT PATEL) for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/12/2005

ORAL JUDGMENT

1. In the present petition, the petitioner who was an elected Councillor of Jamjodhpur Municipality has challenged an order dated 8th April, 1999 passed by the Director of Municipalities, Gujarat State. By the

impugned order the Director of Municipalities was pleased to exercise powers u/s 37 of the Gujarat Municipalities Act, 1963 (herein after referred to as the said Act) and was further pleased to remove the petitioner from the post of Councillor of the Municipality. It was declared that the said post has thereupon fallen vacant.

1.1 In the impugned order only reason stated for exercise of powers u/s 37 of the said Act was that a criminal complaint was filed against the petitioner which ultimately culminated into filing of a charge sheet against him which would show that the petitioner has committed misconduct and has acted in a disgraceful manner.

2. While admitting the petition on 12/8/1999, the learned Single Judge of this Court had granted stay against the impugned order passed by the Director of Municipalities. During the pendency of the petition, therefore, impugned order was stayed. By passage of time, the petitioner occupied his full term of Councillor of the Jamjodhpur Municipality. So far as the question of continuation of the petitioner as Councillor is concerned, the same has become infructuous. One fall out

of the order passed by the Director of Municipalities u/s 37 of the said Act would be to disqualify the petitioner for a period of four years in view of provisions contained in Section 11(1)(a)(ii) of the said Act. Legality of the impugned order dated 8/4/99, therefore, shall have to be decided in this petition despite the term of the municipality being over.

3. A bare perusal of the impugned order would show that the only ground on which the petitioner came to be removed from the position of Councillor of the Municipalities was that a criminal complaint was filed against him in which eventually a charge sheet was also filed. The allegations against the petitioner pertain to issuance of false certificate in favour of 15 persons for obtaining electric connection. Learned AGP Mr. Gori submitted that the allegations were extremely serious in nature. However, it is not the seriousness of the allegations which by itself can permit the authorities to exercise powers u/s 37 of the said Act. Section 37 of the said Act reads as follows:

> “37. (1) The State Government may remove from office-
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> (a) any councillor of a municipality, if on its

> own motion or on receipt of a recommendation of the municipality in that behalf supported by a majority of the total number of the then councillors of the municipality, or
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> (b) any president or vice-president of a municipality,
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> if, after giving the councillor, president or as the may be, vice-president an opportunity of being heard and giving due notice in that behalf to the municipality and after making such inquiry as it deems necessary, the State Government is of the opinion that the councillor, president or as the case may be, vice-president has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable or performing his duties under this Act.
>
> (2)A president or vice-president removed under sub-section (1) shall not be eligible for re-election as a president or vice-president during the remainder of the term of the municipality."

3.1 From the reading of the provisions contained in Section 37(1) of the said Act and in particular those contained in Sub Clause(b) thereof, it can be seen that the if State Government is of the opinion that the Councillor has been guilty of the misconduct in discharging of his duties or of any disgraceful conduct or has become incapable of performing his duties under the Act, may remove such a Councillor after affording an opportunity of being heard and give due notice in that behalf and after making such inquiry as it deems necessary. In the present case sole ground pressed in

service for removing the petitioner is filing of a criminal complaint which ultimately resulted into filing of a charge sheet against him before the criminal Court. Mere filing of the criminal complaint or even filing of a charge sheet against the councillor cannot be by itself a factor to come to the conclusion that he has been guilty of misconduct in discharge of his duties or has committed any disgraceful conduct. Independently of the filing of the criminal case if there was material available on record it was open for the Director of Municipalities to come to such a conclusion. However in the present case there is no further material other than mere filing of a criminal case against the petitioner. For removal of the petitioner, therefore, mere filing of a criminal case was not sufficient. The impugned order, therefore, suffers from illegality and the same is required to be quashed and set aside.

4. In the result petition is allowed, impugned order dated 8th April, 1999 is quashed. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)

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